



# *Court of Federal Claims Bar Association Newsletter*

*Summer 2003 Edition*

## *Court Announces Plans for 16<sup>th</sup> Judicial Conference October 13-14, 2003 Clarion Hotel and Conference Center Shepherdstown, West Virginia*

**H**ow many folks plan to have lunch with Abraham Lincoln this fall? You can, if you attend the upcoming U.S. Court of Federal Claims Judicial Conference on October 13-14 at the Clarion Hotel in Shepherdstown, West Virginia. The Clarion is just an hour and a half drive from Washington, DC. There is a special room rate of \$79.00 for those who plan to stay Monday night. **Note: You must register directly with the Clarion Hotel by calling 304-876-7000 before July 31, 2003 to get this rate.** For further hotel information, visit <http://www.clarionshepherdstown.com>. On the afternoon before the conference (October 13<sup>th</sup>) come join your fellow members of the bar (and their families) and attend one of several special tour offerings of Antietam National Battlefield and Harpers Ferry. The conference kicks off Monday evening with a wine



**Confluence of the Potomac and  
Shenandoah Rivers at Harpers Ferry.**

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## *New Amendments to Rules Proposed by Court*

**O**n June 6 the Court of Federal Claims announced that it proposes to make amendments to its rules governing Congressional Reference Cases (Appendix D) and to its rules governing Complaints of Judicial Misconduct and Disability. The text of the proposed amendments may be found at the court's web site at <http://www.uscfc.uscourts.gov/announce.htm>. The purpose of the judicial misconduct rule changes is to conform the rules to recent statutory amendments contained in the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364, and to incorporate updates to the illustrative rules on this subject

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## *Bar Association on the Internet*

Find out about upcoming Bar Association programs and other important information from the CFC's Web site.

[www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)

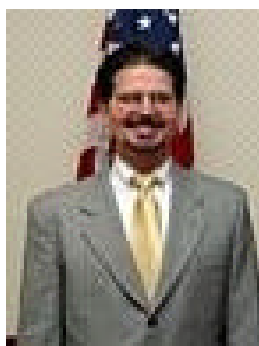
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## Message from the Chief Judge

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The Court's Judicial Conference last October was a celebration of the 20<sup>th</sup> year of our incarnation as a separate Article I court under the jurisdiction of the newly created United States Court of Appeals for the Federal Circuit, pursuant to the Federal Courts Improvement Act of 1982. As many of the practitioners before the Court – and the general Court community – may be aware, we observed the occasion with a zesty, academic debate and discussion of the future of the Court, its unique role in the adjudication of money claims against the federal government, its continued vitality, and a comparison of our Court with the mechanisms for suits against the sovereign in a number of foreign countries.

Former Chief Judge Loren Smith and Professor Steven Schooner of George Washington University School of Law debated the latter's proposition that the Court's jurisdiction and caseload could be satisfactorily distributed *in its entirety* to the (Article III) U.S. district courts. Among other valued speakers, Professors Judith Resnick of Yale Law School, Joshua Schwartz of George Washington University School of Law, Gregory Sisk of Drake University School of Law, and Craig Stern of Regent University School of Law weighed in with their various endorsements of the utility of the Court, calls for granting it greater remedial authority, or other disagreement with the proposal that it be abolished. The agenda of the conference was, in that sense, deliberately provocative. We apparently succeeded, however somewhat beyond what we had contemplated.



In March, the *Washington Post* published an editorial endorsing the Court's abolition. The genesis and timing of the *Post*'s editorial are beyond our ken but, to the extent its editorial has continued the academic and practical discussion that we initiated, it may actually prove to be a valuable contribution to the efforts of many to highlight the work of the Court and focus the discussion on various ways to strengthen the Court's authority to provide more complete justice to deserving litigants against the government.

The Court appreciates the input of the Court's bar association, which, by means of a letter to the editor from Bar Association President John Euler, responded to the *Post*'s editorial with an endorsement of the role of the Court. That letter, in an edited version, appeared in the *Post* on April 9 and is reprinted in this newsletter. Unfortunately, the published version of the letter omitted a key observation that the members of the Court's bar are generally practitioners in both this Court as well as the U.S. district courts and thus in a good position to assess the value of the Court of Federal Claims.

It bears noting that there has been a judicial forum for hearing claims against the government since 1855! The Court of Federal Claims is the inheritor of that special function

and has consistently been given additional jurisdiction over time. For example, in 2000, after extensive study by the GAO, Congress removed concurrent bid protest jurisdiction in the district courts and gave this Court exclusive jurisdiction of those actions.

The current docket of the Court is over 4,000 cases, including vaccine cases. Even without inclusion of the vaccine case numbers, comparison of raw case statistics in this Court with those of district court is inapt, inasmuch as district courts, unlike our Court, employ a weighted-case reporting methodology. In 2002, there were claims totaling \$49.2 billion and judgments awarded in excess of \$935.4 million. Decisions of the Court typically involve lengthy written opinions and come at the end of extensive motion and discovery practice. The Court published 258 opinions in 2002, making a substantial contribution to the development of the law. It is true that the parties sometimes have alternative fora, but they come to our Court nevertheless because they know that the Court has the particularized expertise to address and resolve suits against the government (and is not distracted by a high-volume docket of smaller cases that is more substantially more money than cases brought in the district courts.

In short, there is much to consider in the continued discussion of the vitality of the Court. We welcome this continued debate, just as we

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## *Message from the President*

Dear Colleagues:



As we reach the half way point of an active year, the proactive, If starting members of the Bar Association and its Board have accomplished much. Highlights have been the excellent CLE / social event with Chief Judge Damich in the Spring; a joint effort with the ABA in Arizona in May; our published response to the Washington Post editorial on the future of the Court; a snappy, current and informative web site page; an outstanding newsletter. Thanks to Mark Melnick, David Churchill, Gabrielle Manganiello, and Marc Smith for much of our success.

Looking ahead, planning is well under way for the October judicial conference in Shepherdstown, W.Va. There is a separate article by Nancie Marzulla about that in this publication and more information on the web site. Diane Seward is working hard and doing wonders in the membership arena, finding new ways to reach out to members of the Bar of the Court. Speaking of which, if you have yet to renew for the current year, I urge you to do so at your earliest opportunity. We now have a team of authors to take on the Desk Book under Jim Brookshire's leadership. Steve Frahm is developing an initiative with respect to renewal and currency of the Court's Bar.

Finally, at Maggie Earnest's suggestion, we are looking for ways to reach out to lawyers who have recently entered the practice of law. One example has been the formation of a group to help plan and advise on the judicial conference. Both DOJ and private law firm attorneys at the early stages of their careers have met with Maggie, Nancie Marzulla, and Judge Block to work on the conference. Their participation has and will continue to be meaningful and effective. Mark Melnick and Don Kinner are in charge of devising additional means toward bringing more attorneys into active participation. It is a "win win" for everyone.

Please accept my best wishes for a happy and healthy summer season.

- John Euler

# *Electronic Filing Comes to the Court of Federal Claims*

## Case Management

### CM / ECF

#### Electronic Case Files

The new Case Management/Electronic Case Files (CM/ECF) system of the U.S. Court of Federal Claims became operational on March 17, 2003. The CM/ECF system is being installed in federal courts throughout the nation. It provides a new case management system for docketing and tracking case events (the CM component) and offers judges and attorneys the ability to file and serve various documents electronically (the ECF component).

The ECF component of the system requires only basic computer hardware and software, and offers numerous benefits, among them:

- 24/7 filing of various, as well as access to electronic docket sheets and documents from any internet connection.
- Automatic service and noticing of filings via e-mail and immediate access to electronic copies of those filings.
- Simultaneous access to documents.

The CM/ECF system also allows judges to monitor their dockets from remote locations and to rule on many motions simply by responding with an e-mailed order.

The benefits this system offers are particularly important to a national court, such as the Court of Federal Claims, whose bar is dispersed throughout the country. That is why the court was included by the Administrative Office of U.S. Courts in the first wave of the installation

of the new CM/ECF system. And it is also why the judges of the court have each volunteered to take electronic cases on the system.

As of March 17th, the court immediately began tracking its entire docket using the new CM/ECF system. The court also initiated electronic filing in certain cases designed to “test drive” the system. Specifically, as of that date, all existing contract cases for Chief Judge Damich, Judge Allegra and Judge Block in which the Department of Defense (or a subagency thereof) was the contracting agency were converted to electronic filing. Electronic filing also became mandatory in all new contract cases received by the court in which the Department of Defense was directly involved.

Based on comments received from the bar and the judges, initial experience with the system has been very positive. In the next several months, a number of additional cases will be added to the ECF system – beginning June 16, 2003, all new contract cases will be electronic, and on September 8, 2003, all existing contract cases for Chief Judge Damich, as well as Judges Allegra, Block, Bruggink and Hewitt, will be converted into electronic cases. A substantial block of additional cases, including certain tax and environmental matters, will be added to the electronic case filing system early next year.

Special procedures for these new electronic case are contained in a General Order 2003-42, signed by Chief Judge Damich on March 10, 2003. Later this fall, once the court and bar develop experience

in using the new system, that General Order will be converted into an appendix to the court’s rules. Public comments, of course, will be received on this proposed rule change.

Members of the bar are strongly urged to learn more about the new system. Attorneys will be notified if their case is an electronic one, and will be offered various forms of training, including live and web-based options. Those attorneys will need to complete certain basic training in order to be registered for the system and receive a password. Extensive information about the CM/ECF system, including a copy of the General Order, is available on the court’s public website at <http://www.uscfc.uscourts.gov/CMECF.htm>. For further assistance with CM/ECF, attorneys should contact the CM/ECF User Assistance line at (866) 784-6273 (toll free) or (202) 219-9942, Monday through Friday, 9am - 5 pm. The court welcomes comments on the new system – for instructions on how to pass those comments along, please call (202) 219-1316.

*Francis M. Allegra, Judge  
Joseph Orgovan, Systems  
Manager*

*U.S. Court of Federal Claims*

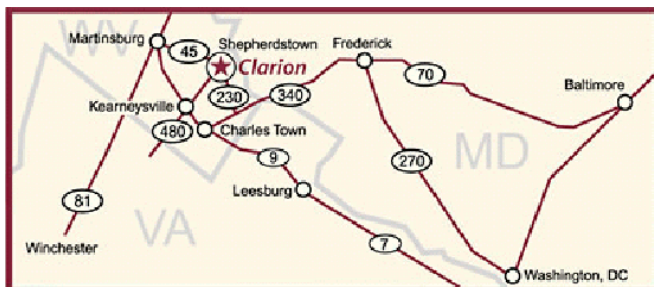


tasting, dinner, and a Roasting of the current and former Chief Judges. Presentations will also be made at the dinner to this year's recipients of the Loren A. Smith Award and the Golden Eagle Award.

A well-roasted Chief Judge Damich will open the conference the next day with his remarks on the State of the Court. The first panel, The People's Court, will address little known historical facts about the court, and their relevance to practice before the court today. An "Ask the Judges" panel will follow in which the judges will be asked to address ethical issues of concern to practitioners. As the keynote luncheon speaker, Mr. Lincoln will share his views about the Civil War and his role in the founding of the U.S. Court of Federal Claims.

In the afternoon we will break into four sessions focusing on special practice areas, including government contracts, takings and intellectual property, tax, and vaccine. There will be continuous hands-on opportunities for Case Management / Electronic Case Filing ("CM/ECF") throughout the day on October 14<sup>th</sup>. Groups of practitioners can pre-register for a session by calling the Clerk's office. As there are a limited number of the specialized training session slots, register early if you want to take advantage of this opportunity.

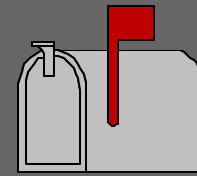
So mark your calendars to attend this important event.



**The Clarion Hotel and Conference Center is an easy drive from the Washington, DC area, and offers shuttle service from BWI, Reagan National and Dulles Airports.**

#### *New Amendments cont'd from Page 1*

promulgated by the Judicial Conference of the United States. The court invites the public to provide comments on the proposed amendments. The deadline for submitting comments to either the congressional reference amendments or the judicial misconduct amendments is August 8, 2003. Comments should be addressed to: Margaret M. Earnest, Clerk of Court, United States Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20005.



## *Change of Address?*

*RCFC 83.1(c)(3) requires the attorneys of record for all parties in a Court of Federal Claims case to "promptly file with the clerk and serve on all other parties a notice of any change in address." And please remember, when you are notifying the Court of any change of address, also notify the Bar Association. This will help to ensure that you continue to receive notification of Court and Bar Association announcements. The Association's web site includes a change of address form to make this notification quick and painless.*



welcome the many constructive calls for strengthening our jurisdiction and for expanding the remedial powers of the Court. We must all nevertheless maintain our focus on the ultimate goal and rationale for any such body that entertains these claims against the sovereign: fair inquiry into such claims and complete justice for any and all of those whom the government has wronged.

Edward J. Damich  
Chief Judge  
U.S. Court of Federal Claims



On March 26, 2003, the *Washington Post* published an editorial advocating the abolition of the United States Court of Federal Claims. The Court of Federal Claims Bar Association immediately responded to the *Post* in a Letter to the Editor, which was published on April 9, 2003. That letter, as published, follows:

**The Washington Post**  
AN INDEPENDENT NEWSPAPER

...in the United States, while American troops are fighting a government, and personal We need a demagogue

## A Court of Necessity

The Post missed the central point in its March 26 editorial advocating abolition of the U.S. Court of Federal Claims.

The U.S. Court of Federal Claims addresses claims seeking money from the federal government—taxpayer money. It deals with some of the most complex litigation on the federal judicial docket. As recently as 2000, Congress determined that certain government-contract claims jurisdiction was better placed in the Court of Federal Claims than shared with the already burdened federal district courts.

The Post's comments about the business and "busy-ness" of the court also were misplaced. The court's docket consists of more than 4,000 cases. Opinions by the judges are recognized as well-written and well-considered and reflecting the complexity of the caseload. Those practicing before the court know that its judges are busy.

Rather than the "birthday party" described in the editorial, the judicial conference in October focused on ways to improve the delivery of justice in suits against the United States. Representatives of the court's bench and bar were joined by experts from nine foreign countries to compare systems. Prof. Steven L. Schooner was but one voice; other speakers advocated that the court's role be increased, not diminished.

This court appreciates that debate can lead to better understanding of the judicial process and to improvement of the dispensation of justice. That was the spirit and the goal of the conference.

JOHN LODGE EULER  
President  
U.S. Court of Federal Claims Bar Association  
Washington

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